APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Caption Omitted]

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued January 18, 1972

Before SEITZ, *Chief Judge*, ROSEN, *Circuit Judge*, and STAPLETON, *District Judge*

Opinion of the Court

(Filed March 16, 1972)

PER CURIAM :

The government brought criminal antitrust charges against the defendants in the New Jersey district court. On defendants' motion the grand jury testimony of certain of defendants' employees was produced by the government. The government also brought in the same district court a civil antitrust action for an injunction against the defendants. Prior to the entry of the final consent decree in the government's civil action, plaintiffs in a private antitrust action against the defendants pending in the same district sought leave to intervene. Their purpose was to move for the production by the government of the grand jury materials produced for the defendants in the criminal case. The defendants opposed the application whereas the government did not oppose limited production.

After the entry of the consent decree in the government's civil action the district court denied intervention but, apparently on its own motion, permitted the petitioners to appear as amici and granted production to them in that capacity.

The defendants in the government's civil action appeal. Their right to do so is challenged by the amici, the "appellees," on the ground that (1) the order for production is not an appealable order and (2) the defendants lacked standing in the district court to oppose the application.

We think the appealability issue is not free from substantial doubt. However, we entertain no such doubt as to the standing issue. When the order was entered in this action the grand jury proceedings involved had terminated. Also final judgment had been granted in the criminal proceedings and a consent final decree entered in the government's civil action. Furthermore, the order to produce was not directed to the defendants. In these circumstances at least, we fail to see how the defendants had standing to oppose the application. The government's right in such a situation is not before us.

We therefore conclude that defendants' appeal should be dismissed for lack of standing to oppose the application in the district court. Consequently, it is not necessary for us to determine the propriety of the district court's action in granting discovery to an amicus.

The appeal will be dismissed.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

[Caption Omitted]

Impounding Order and Order Permitting Inspection of Documents

AND Now, this 15th day of October, 1971, upon the application of the plaintiffs in Civil Nos. 647-68, 90-69, 47-70 and 98-70, treble damage actions now pending in this Court, and after consideration of the memoranda of law filed by those plaintiffs and by all the parties in this action, the oral arguments of counsel on August 12 and 30, 1971, and all other papers and proceedings had herein:

IT IS ORDERED:

1. That all of the documents in the possession of the Government pertaining to the above case or the companion case Cr. 153-65, as set forth more fully in Categories A through J of the Attachment hereto, be and they hereby are impounded until further order of this Court, in the custody of the Antitrust Division, U. S. Department of Justice, at 26 Federal Plaza, New York, New York, in the care of such Department attorneys as the Department shall designate in writing; provided that such attorneys may remove said documents to any other office of the Department of Justice upon written notice to the Court and to counsel in the treble damage actions referred to herein, describing the documents to be removed and the office to which they are being removed.

2. That the documents specified in Categories A, B, C, D (including also documents voluntarily submitted by third parties, such parties not considered to be confidential informants by the Government) and F of the Attachment hereto shall be made available for inspection and copying by parties in the following treble damage actions pending

in this Court, Civil Nos. 647-68, 90-69, 47-70 and 98-70, upon reasonable notice to Government attorneys during normal working hours; provided however that if the Government desires to afford any third party (other than defendants) the opportunity to oppose inspection of documents obtained from such third party the Government shall give immediate notice to such third party who may apply to this Court by written notice and motion filed no later than 21 days following the date of entry of this Order for an opportunity to be heard if it so desires, in opposition to inspection. The Department shall furnish to the parties in the treble damage actions a description of the documents of the third party which will be the subject of the hearing.

3. That the Government shall make available for inspection and copying by parties in the aforesaid treble damage actions those Grand Jury transcripts (within Category H of the Attachment) which have heretofore been made available for inspection and copying by any defendant in this case or the companion case Cr. 153-65, plaintiffs in the treble damage actions having shown a particularized need therefor. The motion of the treble damage plaintiffs to inspect the remaining Grand Jury transcripts is denied, without prejudice to their right to reapply upon a showing of particularized need.

4. That the Government shall provide to the parties in the above-designated treble damage actions a list of the names and, to the extent known, the business and residential addresses of each witness who testified before the Grand Jury referred to above.

5. That treble damage plaintiffs have withdrawn their request for inspection of the documents specified in Categories E and G without prejudice to their right to renew the request upon notice to all parties. The Government will make available to the treble damage parties for inspection all documents, lists and other information submitted to defendant The American Oil Company pursuant to para-

graphs 8 and 11 of the Pretrial Order entered in Cr. 153-65 on October 14, 1969.

6. That the motion of treble damage plaintiffs to inspect the documents specified in Categories I and J of the Attachment is denied.

7. That any person whose documents are impounded under this Order shall have access to such documents under proper supervision upon reasonable notice, at an office of the Department of Justice, during normal working hours.

8. All information revealed by the documents shall be accorded confidential treatment. Any such documents or information revealed under this Order to the treble damage parties or any other person assisting in the prosecution or defense of those treble damage actions shall not be revealed by them to any other person, or used, except in the prosecution or defense of those treble damage actions. Nothing contained herein shall preclude the use of any documents or such information in the course of depositions, pre-trial and trial proceedings in the aforesaid treble damage actions.

/s/ ANTHONY T. AUGELLI
U.S.D.J.

DATED: 10/15/71

Attachment

United States v. *The American Oil Company, et al.*

GENERAL CATEGORIES OF DOCUMENTS PERTAINING TO THIS CASE IN THE POSSESSION OF THE GOVERNMENT

A. Documents submitted by Defendants pursuant to subpoena.

B. Documents submitted by third parties pursuant to subpoena.

C. Documents submitted by Defendants pursuant to a written request (e.g., gasoline sales figures).

D. Documents submitted by third parties pursuant to written request (gasoline sales figures, N.J., Pa., Del.).

E. Memoranda of interviews (not verbatim, memorialized after the fact).

1. Interviews conducted by the F.B.I.

2. Interviews conducted by the Staff of the Antitrust Division.

F. Affidavit (one, received from treble damage plaintiff).

G. Correspondence—routine general correspondence (e.g., covering letters from counsel).

H. Grand Jury Transcripts.

I. Internal memoranda (from one attorney in the Antitrust Division to another attorney in the Antitrust Division).

J. Attorney's Notes (the individual notes of the staff attorneys in preparation of the criminal case for trial).